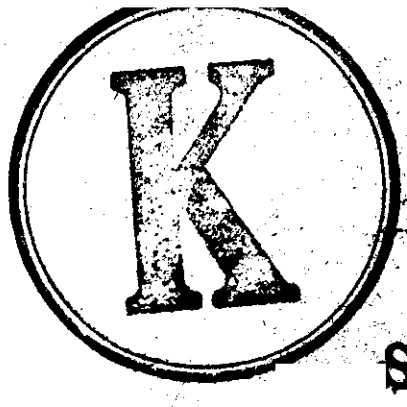
1951.

File No. Bills No. 195

Legal Deptt
B **BRANCH**



~~**Subject:**~~

L. D. Volume No.

Bills No. I of 1951

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File No. Bills No. I/1951

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L. D. VOLUME NO.

BILLS - I

1951.

LEGAL DEPARTMENT.

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1951.

FILE NO. B.CR.P.C./51.

Legal Department.

B Branch.

SUBJECT. - L.A. Bill No.V of 1951.

A Bill to amend the Criminal Procedure Code, 1898, in its application to the Province of Bombay.

BOMBAY ACT No.XX OF 1951.

B. Cr.P.C/51.

615-B.

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1.	B.Cr.Pc/51.	Re: A Bill to amend the Criminal Procedure Code,1898, in its application to the State of Bombay. L.A.Bill No.V of 1951; and Bom.Act No.XX of 1951.	1-166.
2.	P.Agricultural Pests & Diseases. (Ordi)/51.	Re:An Ordinance to amend the Bombay Agricultural Pests and Diseases Act,1947. Bom.Ordinance No.I of 1951.	167-240.
3.	B.Bigamous Marriages/51 (Non-Official).	Re:A Bill to amend the Bombay Prevention of Hindu Bigamous Marriages Act,1946. (Bill Lapsed).	241-290.
4.	B.Constitution/51.	Re: A Bill to amend the Constitution of India.	291-320.
5.	B.Kolhapur Elect./51.	Re: A Bill to amend the Kolhapur Electric Supply, Management and Control Act, 1942. L.A.Bill No.XXIX of 1951 (Bill not moved).	321-414.

Legal Department.

The requisite draft Bill is sent herewith.

2. The subject matter of the Bill falls under Entry 2 in List III in the Seventh Schedule to the Constitution. The Bill does not require any recommendation or sanction. After the Bill is passed it will have to be reserved for the consideration of the President with reference to article 254(2) of the Constitution.

Sd/- J. R. Dhurandhar.
12-12-1950.
Additional Secretary to Government.

U. R. to H. D. No.17683 dated the 13th December 1950.

No.4170.
Legal Department,
Bombay Castle (Bombay No.1),
14th March 1951.

From

Shri J. R. Dhurandhar,
Secretary to the Government of Bombay.

To

The Secretary to the Governor of Bombay.

Subject:- The Code of Criminal Procedure (Bombay Amendment) Bill,1951.

Sir,

With reference to article 200 of the Constitution of India, I am directed to forward herewith for being presented to His Excellency the Governor the authentic copy of the Code of Criminal Procedure (Bombay Amendment) Bill,1951, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 13th and the 26th February 1951, respectively.

2. The subject-matter of the Bill falls under entry 2 in List III in the Seventh Schedule to the Constitution of India. As the provisions of clause 2 of the Bill are repugnant to the provisions of the Code of Criminal Procedure,1898, which is an existing law relating to a matter enumerated in entry 2 in the Concurrent Legislative List, it is necessary to reserve the Bill for the consideration of the President with reference to article 254(2) of the Constitution.

3. I also forward herewith six copies of each of the

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	items
2. Bill as read for the third time and passed by the Bombay Legislative Council	Nos.1 &
3. Extracts from the proceedings of the Bombay Legislative Assembly dated the 13th February 1951 and of the Bombay Legislative Council dated the 26th February 1951.	2 and two copies

of item No.3 of the papers noted in the margin. The

Bill....

Bill was not referred to a Select Committee.

Yours faithfully,

Sd/- J.R.Dhurandhar.
13-3-1956.

Secretary to Government.

Through:

The Secretary to the Government of Bombay,Home Department.

R.

No.G.S.771.

From:
The Secretary to the Governor of Bombay.

To

The Secretary to the Bombay Legislature Department,

Council Hall, Bombay 1.

Subject: The Code of Criminal Procedure (Bombay Amendment)Bill,1951.

Government House,
Bombay,6. March 22.1951.

Sir,

With reference to the Code of Criminal Procedure (Bombay Amendment) Bill, 1951, which was passed by the Bombay Legislative Assembly and the Bombay Legislative Council on February 13 and 26, 1951, respectively, I am directed to state, for the information of the Honourable the Speaker and the Honourable the Chairman, that as the provisions of clause 2 of the Bill are repugnant to the provisions of the Code of Criminal Procedure,1898, which is an existing law relating to a matter enumerated in Entry 2 in the Concurrent Legislative List, it is necessary to reserve the Bill for the consideration of the President with reference to article 254(2) of the Constitution of India. His Excellency the Governor is accordingly pleased, under article 200 of the Constitution, to declare that he reserves the Bill for the consideration of the President.

Yours faithfully,

L. M. Nadkarni.
Secretary to the Governor of Bombay.

.....

No.G.S.-772.
Office of the Secretary to the Governor,
Government House, Bombay 6,
March 22, 1951.

Copy forwarded with compliments to:-

(1) The Secretary to Government, Legal Department, with reference to his letter No.4170, dated March 14,1951;

(2) The Secretary to Government,Home Department, with reference to his endorsement No.5467/6-B, dated March 16,1951.

Sd/- L.M.Nadkarni.
Secretary to the Governor.

No.G.S.1016.

From:
Shri L.M.Nadkarni,I.C.S.
Secretary to the Governor of Bombay.

To
The Secretary to Government,
Legal Department.

Government House.
Bombay, April 16, 1951.

Subject: The Code of Criminal Procedure (Bombay Amendment) Bill,1951.

Sir,

With reference to the correspondence ending with your letter No.5948 dated April 13,1951, on the above subject, I am directed to forward herewith a copy of a letter from the Deputy Secretary to the Government of India, Ministry of Home Affairs, No.17/52/51-Judicial, dated April 11,1951, and to request that the views of the Government of Bombay thereon may kindly be communicated to me at an early date for transmission to the Government of India.

Yours faithfully,

Sd/-~~xxMxNadkarnxx~~.

for Secretary to the Governor of Bombay.

No.6972.
Legal Department.
Bombay Castle (Bombay No.1),
2nd May 1951.

From:
Shri J.R.Dhurandhar,LL.B.,
Secretary to the Government of Bombay,
Legal Department.

To
The Secretary to the Governor of Bombay,
Government House, Bombay 6.

Subject:The Code of Criminal Procedure
(Bombay Amendment) Bill,1951.

Sir,

With reference to the correspondence ending with your letter No.G.S.1016, dated the 16th April 1951 in connection with the above matter, I am directed to inform you that the overlapping of sections is due to the simultaneous action taken by the Government of India and the Government of Bombay to amend the Code of Criminal Procedure. Before the Central Act No.I of 1951 was published in the Gazette of India, the Bombay Bill No.V of 1951 was published and passed by the Assembly. The copy of the Gazette of India containing the said Central Act was received in this Department after the Bombay Bill No.V of 1951 was passed by the Assembly

2. The action suggested by the Government of India for removing the overlapping of sections does not appear to be appropriate. As stated by the Government of India,there is no question of the validity of new section 197A as inserted by the Bombay Bill No.V.of 1951. The overlapping of the sections is a mistake which, it ~~is~~ does not appear can be corrected by having recourse to article 201 of the constitution.That article which empowers the President to direct the Governor to return a Bill to the Legislature with his message, is intended mostly for cases in which some question of principle is involved.The necessary correction can, however, be carried out when the next Repealing and

Copy of a letter No.17/52/51-Judicial, dated April 11,1951, from the Deputy Secretary to the Government of India, Ministry of Home Affairs, to the Secretary to the Governor of Bombay:-

Subject: The Code of Criminal Procedure (Bombay Amendment) Bill,1951.

With reference to your letter No.G.S.-770 dated the 22nd March,1951, on the subject noted above, I am directed to point out that a new section 197A has already been inserted in the Code by section 11 of the Code of Criminal Procedure (Amendment) Act, 1951 (Central Act I of 1951). Although the validity of the new section proposed in the Bill does not depend on the number assigned to it, yet a renumbering has necessarily to be done sooner or later and a good deal of confusion will be saved if it is done now. The Government of India therefore consider that the Bill should be returned to the State Legislature under Article 201 of the Constitution, for reconsideration for rectification of the defect pointed out. The views of the State Government on the action proposed may kindly be communicated to this Ministry at an early date.

Acts
Publication of the Code of Criminal Procedure (Bombay Amendment) Act,1951.

GOVERNMENT OF BOMBAY.

Legal Department,

Resolution No. 8698,

Bombay Castle,2nd June 1951.

Letter to the Secretary to the Governor, No.4170 dated the 14th March 1951.

Letter from the Secretary to the Governor No.G.S. 1423, dated the 29th May 1951.

" With reference to the correspondence ending with your letter No.6972 , dated the May 2,1951, I am to say that intimation has been received from the Government of India, Ministry of Home Affairs, that the President assented to the Code of Criminal Procedure (Bombay Amendment) Bill,1951, on May 24,1951."

RESOLUTION:- The law should be published as bombay Act No.XX of 1951, in the Bombay Government Gazette dated the 2nd June 1951.

2. The Act should be translated into Marathi, Gujarati, Kannad and Hindi (in Devnagari script) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Home Department.

By Order of the Governor of Bombay.

Sd/-S.L.Chaudhari.
Deputy Secretary to Government.

To

The Manager, Government Central Press,Bombay (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Department and 10copies to the Home Department),

The Home Department,)(
* The Oriental Translator to Government,)(with a
The Bombay Legislature Department,)(copy of
The Director of Publicity,Bombay,)(the Act.
The Enquiry Officer for the Secretariat,Bombay.)(

*With four extra copies of the Act.

Amending Bill is introduced in the State Legislature.

Yours faithfully,

Sd/-J.R.Dhurandhar.
29-4-51.
Secretary to Government.

No.G.S.1477.

From
The Secretary to the Governor of
Bombay.

To
The Secretary to Government,
Legal Department,

Government House,
Ganeshkhind, Poona 7,
June 5, 1951.

Subject: The Code of Criminal Procedure (Bombay Amendment) Bill,1951.

Sir,

In continuation of my letter No.G.S.-1423, dated May 29, 1951, I am directed to forward herewith the authentic copy of the Code of Criminal Procedure (Bombay Amendment) Bill,1951, with the President's assent signified thereon.

Yours faithfully,

Sd/-

for Secretary to the Governor.

B Agrl. Pests. &
Diseases / 51.
(Ordinance)

Legal Department.
B Branch.

Bombay Ordin. No.I of 1951.

AN ORDINANCE TO AMEND THE BOMBAY AGRICULTURAL PESTS AND DISEASES ACT, 1947 (LOCUSTS).

Office of the R.L.A.

The proposal is to enact a law taking power-

(a) to order the public generally of any locality in imminent danger of locusts to give assistanc in any preventive or remedial measures and in the destruction of locusts, and

(2) to compulserily recruit labour for purposes of anti-locust measures in desert or spareely populated areas.

The question for R.L.A.'s consideration is whether such a law will be constitutionally valid.

2. The law as proposed would be relatable to agricultur entry 14 in List II, and there does not appear to be any provision in the Constitution which puts any limitation on this legislative power given to the State Government which would make such law ultra vires of the Constitution. It is true that under clause (1) of article 23 of the Constitution traffic in human beings and begar and other similar forms of forced labour are prohibited; but clause (2) of that articlex makes an important exception. Under that clause nothing in article 23 shall prevent the State from imposing compulsory service for public purposes. The only limitation on this power of State to impose compulsory service for public purposes is that the State shall not mak any discrimination on grounds only of religion, race, class or caste or any of them. Undoubtedly fighting the locust menace is a public purpose and the State shall be within its rights in imposing compulsory service for that purpose.

3. It may be pointed out that article 23 of the Constitution of India is similar in terms to the XIII Amendment of the United States Constitution. That amendment provi that neither slavery nor involuntary survitude, except punishment for crime where of the party shall have bee convicted, shall exist within the United States or any subject to their jurisdiction. This Amendment is not wide in terms as article 23 of the Indian Constitutio

Still--

Still the Supreme Court of America, in the case of Butler vs. Perry 240 U.S. 328, has held a Florida Statute imposing forced labour as valid. Under this Florida Statute every able-bodied male person over the age of 21 and under the age of 45 years residing in a county for the prescribed period was required to work on the roads and bridges for a particular period. The Supreme Court of America held that liberty or property was not taken without due process of law contrary to the U.S. Constitution, XIV Amendment by provisions of the Florida Statute. The following observations of the Supreme Court of America are pertinent: "In view of ancient usage and the unanimity of judicial opinion it must be taken as settled that unless restrained by some constitutional limitation, a State has inherent power to require every able-bodied man within its jurisdiction to labour for a reasonable time on public roads, near his residence without direct compensation. This is a part of his duty which he owes to the public." As stated above the provisions of article 23 of the Indian Constitution are much wider in terms and any law as proposed for meeting the menace of locusts is not likely to be considered unconstitutional by the Cpurts.

4. Before any ordinance is drafted, as proposed, it will be necessary for the Department to settle the exact lines on which the ordinance should be promulgated and obtain orders of Government thereon. The papers then may be referred to the R.L.A. for furnishing the requisite draft.

Sd/- J.R. Dhurandhar.
20.6.

Remembrancer of Legal Affairs.

U.R. to A. & F.D. No. 9777, dated the 20th June 1951.

RMS.
22.6.

Office of the R.L.A.

The R.L.A. has been requested to draft an Ordinance on the lines given by the Secretary, A. & F.D. at p.48 ante. The points given by the Secretary, A. & F.D. are very broad and much more details are required to be embodied in the Ordinance before it can be efficiently administered. Instructions of the Secretary, A. & F.D. were, therefore, obtained on details and a revised tentative draft Ordinance is sent herewith.

2. In addition to the points specified by the Secretary, A. & F.D., provisions are made in the Ordinance for the following matters:-

(1) The provision for rendering assistance by the public would not convey to them the precise nature of the work which they will be called upon to do. It is necessary to take powers to give the necessary instructions to the public and require them to carry them out. This power would enable Government to obtain conviction of these persons who neglect to carry them out.

(2) The proclamation to be issued by the Collector or any officer authorized by him should not be for an indefinite period. It should be made ineffective after a specified period from the date of its issue. The period of one month has been provided in the Ordinance. The A. & F.D. should consider if it is suitable.

(3) When a requisition for a motor vehicle is made under the Ordinance there is a possibility that some parts of the vehicle may be removed by the owner or the person under whose control the vehicle is kept. It is, therefore, necessary to make a provision in the Ordinance prohibiting injury to a requisitioned vehicle.

(4) In order to convince a Court that a motor vehicle requisitioned under the Ordinance was intended for the sole purpose of meeting the locust menace, it is necessary to provide in the Ordinance that the use of a motor vehicle shall not be continued by Government

beyond....

beyond a specified period.

(5) It is presumed that the offences under the Ordinance are to be tried summarily as is the case in the East Punjab Ordinance.

(6) If and when labour is pressed into service compulserily in connection with the locust menace it is but proper that they should get certain payment for the work done by them. The provision is made in the Ordinance for such payment but the scale of payment has been left to be determined by rules.

(7) The A. & F.D. should verify if tentative draft Ordinance sent herewith is suitable from the administrative point of view.

2. The subject matter of the draft Ordinance falls under entries 14, 36, and 64 in List II and entries 2 and 42 in List III in the Seventh Schedule to the Constitution. In view of the provisions in the draft Ordinance for requisitioning vehicles it will be necessary to obtain instructions of the President under the proviso to clause (1) of article 213 beforethe Ordinance is promulgated by the Governor.

3. The Department will no doubt attach the necessary Statement to the Ordinance.

Sd/- J.R.Dhurandhar. 13.7

Remembrancer of Legal Affairs.

U.R. to A. & F.D. No.686=Confl., dated the 13th July 1951.

RMS.
22.6.

Office of the R.L.A.

The draft Ordinance at pages 91 to 109 ante has not as yet been approved by the President and promulgated by the Governor. It appears from Secretary, A. & F.D.'s note dated 19-7-51 at p. 117 ante that some additional amendments are to be included in the draft before the Ordinance is ~~xxxxxx~~ converted into an Act. These amendments are not ready. In these circumstances, it would be wrong to prepare a draft Bill at this stage and to place it before the Cabinet at its meeting on 4th August. Unless an Ordinance is promulgated there can be no question of converting it into an Act. The proper stage at which a Bill converting an Ordinance into an Act can be prepared is when the Ordinance is promulgated and Government think it necessary to prolong the life of the enactment beyond the period laid down in clause (2)(a) of Article 213 of the Constitution or to make it a permanent measure. For Government to take decision to prolong its life either temporarily or permanently even before it is brought into being would offend against the spirit of the Constitution if not against its letter. The Cabinet has already approved the draft Ordinance in its present form and there is no point in placing before it a Bill in the same form. The Ordinance remains in force for six weeks from the date of assembly of both the Houses of the State Legislature i.e. from the 31st August 1951 according the present programme of the ensuing session, and there is therefore sufficient time to convert the Ordinance into a Bill in due course when all the material is ready. If necessary approval of the Cabinet can be obtained by circulation. The Department may therefore refer the papers to this Department for preparing the Bill after the Ordinance is issued and the additional amendments to be made are read and settled by the Department.

Sd/- J.R.Dhurandhar.
30.7.
Remembrancer of Legal Affairs.

U.R. to A. & F.D., No.752-Confl.,dated the 30th July 1951.

RMS.
22.6.

No. 19-L.
Legal Department,
Council Hall, Poona, 20th August 1951.

From

Shri J.R.Dhurandhar,
Secretary to the Government of Bombay,
Legal Department.

To

The Secretary to the Bombay Legislative Council Assembly.

Subject: The Ordinance to amend the Bombay Agricultural Pests and Diseases Act, 1947.

Sir,

I am directed to forward herewith a copy of the Ordinance to amend the Bombay Agricultural Pests and Diseases Act,1947 (Bom. Ordinance I of 1951), promulgated by His Excellency the Governor of Bombay under article 213 of the Constitution with a request that the said Ordinance may be laid before the Bombay Legislative Council Assembly as required by sub-clause (a) of clause (2) of the said article 213.

Yours faithfully,

Sd/. K.J.Pathare,

for Secretary to Government.

Rms.
22.6.